

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA A. SCOTT and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, OH

*Docket No. 98-1694; Submitted on the Record;
Issued January 7, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on or after January 31, 1997 causally related to her accepted employment injury.

On November 19, 1996 appellant, then a 31-year-old clerk, filed an occupational disease claim alleging that she sustained a sprain/strain and a torn ligament in her shoulder due to factors of her federal employment.¹ The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder tendinitis.

In a report dated November 20, 1996, Dr. Srymer Mstorer diagnosed a right shoulder strain and found that appellant could return to work with restrictions. In a report dated November 21, 1996, a physician diagnosed a rotator cuff strain and tear of the right shoulder and tendinitis. He found that appellant could return to limited-duty employment with restrictions.

The record indicates that the employing establishment terminated appellant on January 30, 1997 "due to an attendance problem" and that she was working with restrictions at the time of her termination.

By decision dated March 10, 1997, the Office found that appellant was not entitled to compensation after January 31, 1997 as she had not established that she was disabled due to her accepted employment injury. In a letter dated April 7, 1997, appellant requested a hearing before an Office hearing representative. At the hearing, held on January 20, 1998, appellant related that she was fired on January 31, 1997 because she missed work due to pain from her shoulder injury. Appellant further stated that the employing establishment did not assign her work within her restrictions.

¹ In an internal memorandum dated February 12, 1997, the Office noted that the factual evidence established that the claim was for a traumatic injury occurring on November 1, 1996.

By decision dated March 20, 1998 and finalized March 24, 1998, the hearing representative affirmed the Office's March 10, 1997 decision. The hearing representative found that appellant had not submitted sufficient medical evidence to establish that she stopped work on January 31, 1997 because she was physically unable to perform her employment duties.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after January 31, 1997.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In the present case, appellant sustained right shoulder tendinitis in the performance of duty. Appellant returned to work in a limited-duty capacity until January 31, 1995, when she was terminated for lack of attendance. The Board notes that termination for cause does not itself give rise to a compensable disability. The term disability is defined as "the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury."³ The Office procedure manual defines a recurrence of disability to include the following: "Withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. This withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties."⁴ In this case, the light-duty assignment was withdrawn due to appellant's termination for cause.⁵ Thus, the issue is whether the medical evidence establishes that appellant was unable to perform her limited-duty employment on or after January 31, 1997.

In support of her claim, appellant submitted a report dated February 14, 1997 from Dr. Richard M. Donnini, an osteopath and her attending physician. He discussed appellant's history of an employment injury on November 1, 1996 and her complaints of pain. Dr. Donnini related:

"[Appellant] states that she has no pain-free intervals except with the use of medications for short periods. Her current limitations include being able to sit for approximately two hours, stand for four hours and walk for one hour. She states

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ 20 C.F.R. § 10.5(17).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(2)(c) (May 1997).

⁵ While appellant generally asserted at the hearing that the employing establishment did not assign her light-duty employment, she has not substantiated this allegation with any evidence or provided a detailed description of her required employment duties.

that she has difficulty working overhead, with lifting and doing repetitive activity. Her pain is aggravated with straining, standing, walking, lifting, bending forward frequently and bending backwards frequently.”

Dr. Donnini noted that a magnetic resonance imaging scan obtained on November 8, 1996 “revealed possible tendonitis and a tiny amount of fluid in the subdeltoid bursa.” He diagnosed a right shoulder sprain/strain by an MRI scan and “a partial thickness rotator cuff tear and tendinitis right rotator cuff” with “some mild subacromial impingement.” Dr. Donnini related the diagnosed conditions to the November 1, 1996 employment injury. He however, did not provide a finding, supported by medical rationale, that appellant was unable to perform her limited-duty employment beginning January 31, 1997 due to her accepted employment injury. To establish a recurrence of disability, the evidence must contain a rationalized medical report finding that the November 1, 1997 employment injury resulted in appellant’s inability to perform her employment on or after January 31, 1997. As Dr. Donnini did not find appellant disabled from her limited-duty employment or provide more than a conclusory statement regarding causation, his finding is of diminished probative value.⁶

In a disability certificate dated March 26, 1997, Dr. Donnini diagnosed a shoulder sprain and strain and found that appellant was unable to work from March 26 to June 26, 1997. However, he did not specifically relate the disability to appellant’s November 1996 employment injury or list any objective findings and thus his report is of little probative value.⁷

In an office visit note dated July 25, 1997, Dr. Donnini diagnosed right shoulder tendonitis, sprain/strain and a partial rotator cuff tear. He did not discuss whether appellant was disabled from employment or relate any condition to the accepted employment injury. Thus his opinion is insufficient to meet appellant’s burden of proof.

As appellant failed to submit rationalized medical evidence establishing that her claimed disability after January 31, 1997 is causally related to her accepted employment injury, the Office properly denied her claim for compensation.

⁶ *Marilyn D. Polk*, 44 ECAB 673 (1993).

⁷ Appellant submitted additional medical evidence from Dr. Donnini dated 1995 through 1997 relevant to a 1995 motor vehicle accident. In a report dated January 23, 1997, he diagnosed cervical strain, thoracic strain, left shoulder sprain/strain, occipital neuralgia, intermittent cervical radiculitis and myofascial pain syndrome causally related to appellant’s 1995 motor vehicle accident.

The decision of the Office of Workers' Compensation Programs dated March 20, 1998 and finalized March 24, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 7, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member